

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DAVID JASON ADAMS, #41770-379,

Petitioner,

v.

ACTION NO. 2:20cv316

J. ANDREWS, Warden,

Respondent.

FINAL ORDER

After unsuccessfully seeking relief on collateral review under 28 U.S.C. § 2255, *pro se* Petitioner David Jason Adams filed a writ of habeas corpus pursuant to 28 U.S.C. § 2241, arguing that the application of a mandatory minimum sentence for his conviction under 18 U.S.C. § 2241(c) violated the *ex post facto* clause. He relies on the “savings clause” in § 2255(e) and asks the Court to resentence him accordingly.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for a report and recommendation. The Magistrate Judge filed a Report and Recommendation on May 4, 2021, recommending the petition be denied and dismissed without prejudice for lack of jurisdiction. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge’s Report and Recommendation and the time for filing objections has now expired.

Accordingly, the Court accepts the findings and recommendations set forth in the report of the United States Magistrate Judge filed May 4, 2021, and it is ORDERED that Respondent’s

Motion to Dismiss is GRANTED, and that the petition is DENIED and DISMISSED without prejudice for lack of jurisdiction.

Finding that the basis for dismissal of Petitioner's § 2241 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within sixty (60) days** from the date of this Order. Petitioner may seek such a certificate by filing a written Notice of Appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

IT IS SO ORDERED.

/s/
Arenda L. Wright Allen
United States District Judge

June 9, 2021
Norfolk, Virginia